IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10407 of 1998

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RATILAL LERABHAI PATELIYA

Appearance:

1. Special Civil Application No. 10407 of 1998

MR KAMAL TRIVEDI Ld. A.A.G. with MS. SANGEETA VISEN for Petitioner No. 1-3

MRS VASAVDATTA BHATT for Respondent No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 18/08/2004

ORAL JUDGEMENT

1.0. The petitioners by way of this petition have challenged the judgment and award of the Labour Court,

Godhra, dated 31st March, 1998 in Reference [L.C.G.] No. 254 of 1991, whereby the Labour Court has directed the petitioners to reinstate the respondent-workmen on his original post with 25% backwages and also awarded costs of Rs.2,000=00.

2.0. The short facts as they emerge from the record of the petition are that the respondent-workman was serving as unskilled labourer in the Forest Department, since last 17 years. It is say of the respondent that though presence was marked in the muster roll, he was not given payslip or identity card. It is further the say of the respondent-workman that he had worked for more than 240 days. The respondent further submitted that vide order dated 30th November, 1990. he was relieved from the service without any notice pay.

2.1. In view of that the respondent-workman raised industrial dispute, which was ultimately, referred to the Labour Court for adjudication being Reference [L.C.G.] No. 25/1991 whereby the Labour Court directed to reinstate the respondent-workman on his original post with 25% backwages. Hence, this petition.

2.2. Mr. Kamal Trivedi, learned Additional Advocate General, appearing for the petitioners submitted that the Labour Court has committed an error in granting reinstatement alongwith 25% backwages, inspite of the fact that the petitioners have produced documents on record to show that the respondent-workman had not completed 240 days in the preceding year. He further submitted that the Labour Court has relied upon the material and evidence of the respondent-workman, where he has stated that he had worked in normal range from the year 1972 to 1973 and in the Extension Division from the year 1989.

2.3. He further submitted that the Labour Court though on earlier occasion has found that the workman had worked for 165 days, i.e. from December 1989 to June, 1990 and for 18 days i.e. from 10th November, 1997 to 30th November, 1997, but merely, the employer, namely the petitioners had not produced documents from 1989 to 1990, the, presumption was drawn against the petitioners. He further submitted that the criteria adopted by the Labour Court is not proper. Actually the requirement is, if he is a daily wager and if he has not completed 240 days in the last preceding year, at the most, the employee is entitled for notice pay and retrenchment compensation. and not reinstatement. He, therefore, submitted that the order reinstating the respondent-workman is not proper

inasmuch as whether sanctioned posts were available or not and other criteria whether the budgetary provision is required to be examined by the Labour Court.

3.0 I find force in the submission of the learned counsel for the petitioners. If the respondent workman is a daily wager and if he has not completed 240 days in the last preceding year, then at the most he is entitled for notice pay and retrenchment compensation and the Labour Court has clearly erred in passing the order of reinstatement. Prima facie, it appears that the Labour Court has also not considered whether sanctioned posts were available or not and other criteria whether there is any budgetary provisions for the said post. Under the circumstances it would be appropriate to remand the matter to the Labour Court to decide the issue afresh after taking into consideration the aforesaid aspects.

4.0 In that view of the matter, the petition is partly allowed. The award of the Labour Court dated 31st March, 1988 in Reference [L.C.G.] No. 254 of 1991 is required to be quashed and set aside. The matter is ordered to be remanded to the Labour Court for deciding afresh.

4.1 It is clarified that it will be open for both the sides to adduce evidence. The Labour Court while deciding the matter afresh, shall consider the evidence produced by both the sides on record. It is directed that the Labour Court shall decide the matter afresh within a period of two months from the date of receipt of writ of this order. It is further, clarified that if the respondent-workman is not paid any salary, the petitioners shall pay the same from the date of publication of the award till today and further if the provisions of Section 17-B of the I.D. Act are not complied with, the petitioners shall grant the same within a period of one month from today.

4.2 Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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